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No. 888

In the Supreme Court of the United States

OCTOBER TERM, 1970

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL No. 38, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General

JEROME NEPHARIS,
Assistant Attorney General

DAVID L. ROSE,
STUART A. SMITH,
ROBERT M. HANDLEMAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 698

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 38, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINIONS BELOW

The opinion (Pet. App. 10–69) and supplemental opinion (Pet. App. 70–73) of the district court are not officially reported. The opinion of the court of appeals (Pet. App. 74–89) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 90) was entered on June 19, 1970. The petition for a writ of certiorari was filed on September 15, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

406-823—70

QUESTION PRESENTED

Whether Title VII of the Civil Rights Act of 1964 requires affirmative relief against current employment practices which perpetuate the effects of past racial discrimination.

STATUTES INVOLVED

Section 703(c) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2(c), provides in pertinent part:

> It shall be an unlawful employment practice for a labor organization—
>
> (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
>
> (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; * * *

Section 703(d), 42 U.S.C. 2000e–2(d), provides:

> It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program

established to provide apprenticeship or other training.

Section 706(g), 42 U.S.C. 2000e–5(g), provides in pertinent part:

> If the Court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the Court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate * * *.

Section 707(a), 42 U.S.C. 2000e–6(a), provides:

> Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern of practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

STATEMENT

This suit was brought by the United States against the petitioner union and the Electrical Joint Appren-

ticeship and Training Committee under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) *et. seq.* The complaint alleged that the defendants were engaged in a pattern or practice of racial discrimination by excluding Negroes from participating in employment opportunities, including union membership, an apprenticeship program, a work referral system, and contractor affiliation.

The district court found that racial discrimination against Negroes had been practiced in referral, admissions, and apprenticeship selection prior to the effective date of the Act (Pet. App. 69; see, also, Pet. App. 63) and that overt discriminatory practices with respect to referral had continued until just before commencement of this action (Pet. App. 68); but it found no conscious discrimination in apprenticeship selection or membership after the effective date of the Act. It denied all relief with respect to admission to the union or the apprenticeship program and entered a general injunction against continuation of overt discriminatory practices in the referral system. The court specifically declined to order affirmative relief designed to alleviate the continuing effect of the past discriminatory practices (Pet. App. 15–16).

On appeal, the court of appeals reversed and remanded the case "for consideration of appropriate affirmative relief" (Pet. App. 87).

ARGUMENT

The court of appeals ruled simply that where a defendant follows employment practices which, although neutral on their face, result in continuation of the

effects of past racial discrimination, the district court is obligated under Title VII of the Civil Rights Act of 1964 to order affirmative relief which so far as feasible eliminates such discrimination. The decision of the court of appeals is clearly correct and is in accord with all of the appellate decisions under Title VII.

Petitioners contend that the court of appeals erred in reversing the judgment of the district court without holding that its findings were "clearly erroneous" or its decree was an "abuse of discretion." The basis of reversal was not disagreement with the district courts findings of fact, however. Nor is discretion involved. The court of appeals differed with the district court on a legal issue: whether Title VII requires affirmative relief in situations such as this.

In cases of racial discrimination this Court has held that:

> the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.

Louisiana v. *United States*, 380 U.S. 145, 154; see, *e.g.*, *Carter* v. *Jury Commission*, 396 U.S. 320, 340; *Green* v. *County School Board*, 391 U.S. 430, 438 n. 4. This principle, developed in constitutional cases, is, particularly in light of the statutory authorization of affirmative relief (Section 706(g), *supra* p. 3; see, also Section 707(a), *supra* p. 3), equally applicable to suits to secure the comprehensive rights to equal employment opportunities conferred by Congress in Title VII. In the context of enforcing Title VII, it requires

the entry of a specific, detailed decree which eliminates or reforms practices and procedures that perpetuate the effects of past discrimination. This rule, adopted by the court below, has been unanimously recognized in all the court of appeals decisions on point.[1] In view of the district court's findings of discrimination, the rule was properly applied by the court of appeals in this case.[2]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
JERRIS LEONARD,
Assistant Attorney General.
DAVID L. ROSE,
STUART P. HERMAN,
ROBERT R. MARSHALL,
Attorneys.

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[1] See *Griggs* v. *Duke Power Co.*, 420 F.2d 1225 (C.A. 4), petition for a writ of certiorari on other grounds granted, 399 U.S. 926, No. 124, this Term; *United States* v. *Dillon Supply Co.*, 63 CCH Lab. Cas. ¶ 9477 (C.A. 4, July 8, 1970); *Local 189, United Papermakers* v. *United States*, 416 F.2d 980 (C.A. 5), *certiorari denied*, 397 U.S. 919; *United States* v. *Hayes International Corp.*, 415 F.2d 1038 (C.A. 5); *Local 53, Asbestos Workers* v. *Vogler*, 407 F.2d 1047 (C.A. 5); *Bowe* v. *Colgate-Palmolive Co.*, 416 F.2d 711 (C.A. 7); *United States* v. *Sheet Metal Workers, Local 36*, 416 F.2d 123 (C.A. 8); *Jones* v. *Lee Way Motor Freight, Inc.*, No. 464–69 (C.A. 10, August 17, 1970).

[2] The decisions on which petitioners rely (Pet. 22–30) involve neither Title VII nor the issue of whether affirmative relief is required to correct employment practices which perpetuate the effects of past racial discrimination.

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